

ANNUAL WEINGARTEN RIGHTS

Title 5, United States Code (USC), Section 7114(a)(3) requires each agency to "annually inform its employees of their rights under paragraph 2(B) of this subsection." This deals with representation rights and provides that:

"(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at -

(B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if-

- (i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and;
- (ii) the employee requests representation"

This right is commonly referred to as the "Weingarten" right, based on the U.S. Supreme Court's private sector labor decision in *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975). Briefly, this Statutory right provides that when an agency representative questions a bargaining unit employee and the employee reasonably believes that disciplinary action may occur, and the employee requests union representation, the employee is generally entitled to representation if the examination continues.

Upon request for union representation in this situation, management has some options:

- a. grant the request, set another time/date and tell the employee to return with his/her representative or management notifies the union that a meeting to question a bargaining unit is going to take place and that the employee has requested union representation;
- b. continue the investigation without interviewing the employee;
- c. offer the employee a clear choice to either continue the interview without representation or have no interview.

Keep in mind that the Weingarten notice is not like a Miranda warning -- management is not obligated to notify unit employees of their right to representation at the time an employee is questioned. The Statute only requires an annual notice. However, the Federal Labor Relations Authority has found union proposals negotiable that require management to notify an employee of his or her Weingarten right whenever an agency questions the employee. So, in any event, check your collective bargaining agreement.

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